

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 11  
)  
MACK INDUSTRIES, LTD., ) Case No. 17-09308  
)  
Debtor. ) Hon. Carol A. Doyle  
)  
) Hearing: June 1, 2017 at 10:00 a.m.

**NOTICE OF MOTION**

TO: ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on Thursday, June 1, 2017, at 10:00 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Carol A. Doyle in Courtroom 742 at 219 South Dearborn Street, Chicago, Illinois, or before any other judge sitting in her place and stead, and present the following **Trustee's Motion To Convert Case to a Chapter 7 Case**, at which time and place you may appear if you so desire.

Dated: May 25, 2017

RONALD R. PETERSON, not individually  
but as the chapter 11 trustee for the bankruptcy  
estate of Mack Industries, Ltd.,

By: /s/ Ronald R. Peterson  
Ronald R. Peterson

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**CERTIFICATE OF SERVICE**

I, Ronald R. Peterson, an attorney, hereby certify that on May 25, 2017, I caused a copy of the foregoing **Notice of Motion** and the following **Trustee's Motion To Convert Case to a Chapter 7 Case** to be served upon each of the parties listed on the attached Service List by the Court's CM/ECF system or First Class U.S. Mail, as indicated.

/s/ Ronald R. Peterson

Ronald R. Peterson

**SERVICE LIST**

**By ECF Notification:**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
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In re:	) Chapter 11
	)
MACK INDUSTRIES, LTD.,	) Case No. 17-09308
	)
Debtor.	) Hon. Carol A. Doyle
	)
	) Hearing: June 1, 2017 at 10:00 a.m.

**TRUSTEE’S MOTION TO CONVERT CASE TO A CHAPTER 7 CASE**

Ronald R. Peterson, not individually, but as the chapter 11 trustee (the “Trustee”) for the bankruptcy estate of Mack Industries, Ltd. (the “Debtor”), respectfully requests that the Court enter an Order pursuant to 11 U.S.C. § 1112(b)(1) converting the above-captioned chapter 11 case to one under chapter 7 (this “Motion”), and states:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) in which the Court may constitutionally enter a final order. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This Motion is made pursuant to §§ 1106(a)(5) and 1112(b)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code” or the “Code”) and Rule 1017(f)(1) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**BACKGROUND**

3. On March 24, 2017 (the “Petition Date”), the Debtor filed a case under chapter 11 of the Bankruptcy Code (this “case”).

4. On April 20, 2017, American Residential Leasing Company, LLC (“American”) moved for the appointment of a case Trustee (the “American Motion”). (Dkt. 21.) The allegations in the American Motion detail a long history of potentially fraudulent or otherwise dishonest

prepetition conduct by the Debtor, its principals, James K. McClelland (“McClelland Sr.”) and James H. McClelland (“McClelland Jr.” and collectively with McClelland Sr., the “McClellands”), and a number of entities affiliated with the Debtor and also owned or controlled by the McClellands. (*See generally* Dkt. 21 at 3-9).

5. In particular, the American Motion raised the prospect of numerous avoidance actions against insiders, affiliated entities, or both. (*See, e.g., id.* at 3, ¶ 11 (describing transfers to affiliated entities of over \$6 million in 2014 and \$2 million in 2013); *id.* at 3-5, ¶¶ 12-18 (discussing late 2016 payments of at least \$100,000 to McClelland Sr.’s wife); *id.* at 5-6, ¶ 19 (alleging transfers of at least \$100,000 to McClelland Sr. in 2016 and possibly 2017); *id.* at 6, ¶ 20 (describing additional transfers in 2016 to McClelland Sr.’s wife and McClelland Jr.).)

6. The American Motion also raised a variety of apparent omissions and inaccuracies in the Petition, Schedules, and Statement of Financial Affairs. (*See, e.g., id.* at 8, ¶ 27 (noting the absence of any substantive information regarding potential preferences and insider preferences in the Debtor’s Statement of Financial Affairs); *id.* at 8, ¶ 28 (contrasting the negative response on the Debtor’s Statement of Financial Affairs to question whether the Debtor had given any value to insiders within a year of the Petition Date to the reality of many such transfers as shown by the results of American’s discovery in its state court action); *id.* at 9, ¶ 33 (noting the absence of any executory contracts in Schedule G); *see also id.* at 8-9, ¶¶ 29-30 (similar).)

7. Finally, the American Motion sets forth a course of pre-bankruptcy litigation conduct that further calls into question the completeness and accuracy of the Debtor’s schedules as well as the potential occurrence of additional or further dissipation of property of estate. (*See id.* at 3, ¶¶ 8-10 (contrasting representations by the Debtor’s counsel in American’s state court action that the Debtor did not make transfers to insiders with the contrary reality revealed by



documents later discovered by American in its state court action); *id.* at 7, ¶ 25 (discussing the use of the bankruptcy filing to prevent a hearing in American’s state court action regarding, inter alia, an injunction to prevent further dissipation of assets to insiders).)

8. Additionally, on April 13, 2017, Colony American Finance Lender, LLC (“Colony”) brought a breach of contract action in the Northern District of Illinois against McClelland Sr., in which Colony sought to enforce McClelland Sr.’s guaranty of loan made to an affiliated entity, Mack LOC I, LLC, and secured by the stock of another affiliated entity, Mack LOC III, LLC. (*See* Case No. 17-cv-02806, Dkt. 1.) The Complaint in Colony’s action (the “Colony Complaint”) alleges that McClelland Sr., or the McClellands or affiliated entities, pocketed nearly \$20 million in loan proceeds for his or their benefit or that of other insiders or affiliated entities. (*See id.* at 5, ¶ 16 & 6, ¶ 20 (alleging amount due and owing of over \$19 million); *id.* at 6, ¶ 22 (alleging failure to apply loaned funds to purposes agreed to under the terms of the loan); *id.* at 7-16 (alleging various breach of loans, including routine improper requests for advances); *id.* at 17-18 (alleging improper removal from sites of property paid out of loan proceeds and required to be used for purposes of the transaction with Colony); *id.* at 19-20 (alleging failures to make payments of rents required by the loan terms).)

9. The Colony Complaint raises questions regarding, inter alia, the prospect of further dissipation of potential estate assets and transparency issues, as with the American Motion. (*See, e.g., id.* at 6, ¶ 21 (alleging lack of cooperation from affiliated entities); *id.* at 18, ¶¶ 58-60 (alleging dissipation of property in an apparent attempt to hinder or delay creditors); *id.* at 20, ¶¶ 59-61 (alleging affirmative efforts to collect rents early in an apparent attempt to hinder or delay creditors).)

10. On May 4, 2017, the Court granted the American Motion. (Dkt. 41.) Thereafter, the U.S. Trustee duly appointed Ronald R. Peterson as the chapter 11 trustee in this case, subject to approval of the Court. On May 5, 2017, the U.S. Trustee moved for the approval of its appointment of Ronald R. Peterson as the chapter 11 trustee in this case. (Dkt. 46.)

11. On May 10, 2017, the U.S. Trustee filed the corresponding affidavit of disinterestedness of Ronald R. Peterson pursuant to Bankruptcy Rule 2007.1. (Dkt. 49.) On May 11, 2017, the Court issued an Order Approving the Appointment of Ronald R. Peterson as the Chapter 11 Trustee. (Dkt. 51.)

### **RELIEF REQUESTED**

12. By this Motion, the Trustee, pursuant to § 1112(b) of the Bankruptcy Code, seeks the conversion of this case for cause to one under chapter 7 of the Bankruptcy Code.

13. Section 1112(b) authorizes the Court to convert a Chapter 11 case for “cause.” 11 U.S.C. § 1112(b)(1). “Subsection (b) of section 1112 enumerates ten examples of events or conduct that constitute cause. However, this list is not exhaustive, and the court is free to consider other factors as they arise and to use its equitable powers to reach an appropriate result in individual cases.” *All Denominational New Church v. Pelofsky (In re All Denominational New Church)*, 268 B.R. 536, 538 (B.A.P. 8th Cir. 2001) (internal citations omitted).

14. Section 1112(b) provides for cause where there is “continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation.” 11 U.S.C. § 1112(b)(4)(A). In addition, the courts have held that cause pursuant to § 1112(b) exists in instances of self-dealing, insider transactions, or breaches of fiduciary duty, as in *In re New Millennium Mgmt., LLC*, 2014 WL 2465938, at \*3 (Bankr. S.D. Tex. June 2, 2014) and *In re Running*, 1990 WL 304246, at \*6 (N.D. Ill. Oct. 30, 1990), and bad faith, including failures to file accurate schedules or monthly

operating reports, as in *New Millennium*, 2014 WL 2465938, at \*3; *In re Del Monico*, 2005 WL 1129774, at \*4 (Bankr. N.D. Ill. May 13, 2005); *All Denominational*, 268 B.R. at 538; and *In re Citi-Toledo Partners*, 170 B.R. 602, 607 (Bankr. N.D. Ohio 1994).

15. First, the Trustee's investigation to date leads him to believe that the estate will diminish in value unnecessarily if this case remains in chapter 11 because the case should proceed as a liquidation, not a rehabilitation of the Debtor's business. Chapter 7, in which no plan or disclosure statement needs to be prepared and confirmed, would be a far more efficient way to effect a liquidation. See, e.g., *In re Lyons Transp. Lines, Inc.*, 123 B.R. 526, 534 (Bankr. W.D. Pa. 1991). Moreover, the Court only need find "some diminution" in value postpetition to find cause to convert. See *Citi-Toledo*, 170 B.R. at 606 (emphasis added) (internal quotation marks and citation omitted). The usual measure of diminution in value is a debtor's profitability postpetition. See, e.g., *Del Monico*, 2005 WL 1129774, at \*3.

16. Second, there is no reasonable likelihood of rehabilitation in this case. It is well established that this standard "is not the technical one of whether the debtor can confirm a plan, but, rather, whether the debtor's business prospects justify continuance of the reorganization effort." *In re LG Motors, Inc.*, 422 B.R. 110, 116 (Bankr. N.D. Ill. 2009) (internal quotation marks and citation omitted). Specifically, "rehabilitation" means "to put back in good condition; reestablish on a firm, sound bases." *Citi-Toledo*, 170 B.R. at 607 (internal quotation marks and citations omitted). Given the Trustee's initial investigation, coupled with the allegations raised in both the American Motion and the Colony Complaint, the Trustee believes that he could not put forward a confirmable plan of reorganization in this case, let alone "put [the Debtor's business] back in good condition." *Id.*

17. *Third*, the allegations set forth in the American Motion and the Colony Complaint of self-dealing and potentially fraudulent conduct constitute bad faith, fiduciary breach, or both. Either suffices as cause to convert this case. *See New Millennium*, 2014 WL 2465938, at \*3; *Del Monico*, 2005 WL 1129774, at \*4; *Citi-Toledo*, 170 B.R. at 607; *Running*, 1990 WL 304246, at \*6.

18. Based on above, and on the Trustee's ongoing investigation into the facts and circumstances of this case, the Trustee believes that cause exists to convert this case to a case under chapter 7, and that conversion to a chapter 7 case would be in the best interest of the estate, creditors, and other parties of interest in this case.

19. In addition, the Trustee requests that while the Debtor should be subject to the requirements of Rule 1019(5)(A) post-conversion, the Court exercise its discretion under this Rule to excuse the Trustee from this requirement given his short time as appointed chapter 11 Trustee. For the same reason, the Trustee requests that the Court determine the deadline for him and his professionals to request payment of administrative expenses pursuant to Rule 1019(6) after the appointment of the chapter 7 Trustee.

### **NOTICE**

20. The Trustee has given seven days' notice of this Motion to the United States Trustee, the Debtor, the creditors, and other parties of interest. In light of all the facts and circumstances of this case, the Trustee submits that cause exists to shorten the notice of this Motion to that given pursuant to Bankruptcy Rule 9006(c).

WHEREFORE, the Trustee respectfully requests that the Court enter an Order converting this case to one under chapter 7 of the Bankruptcy Code, and granting such other or further relief as the Court deems just.

Dated: May 25, 2017

RONALD R. PETERSON, not individually  
but as the chapter 11 trustee for the bankruptcy  
estate of Mack Industries, Ltd.,

By: /s/ Ronald R. Peterson  
Ronald R. Peterson

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